

1 Sheila Polk, State Bar No. 007514
2 Yavapai County Attorney

3 Attorneys for STATE OF ARIZONA

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 JAN 10 PM 4:19

CLERK

4 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

BY: ROBBIE JO BALL

5 IN AND FOR THE COUNTY OF YAVAPAI

6
7 **STATE OF ARIZONA,**

V1300CR201080049

8 Plaintiff,

9 vs.

**STATE'S OBJECTION TO
DEFENDANT'S PROPOSED JURY
QUESTIONNAIRE**

10 **JAMES ARTHUR RAY,**

Honorable Warren Darrow

11 Defendant.

12
13 The State, through undersigned counsel, respectfully objects to Defendant's proposed jury
14 questionnaire, and respectfully requests this Court proceed with the proposed juror questionnaire
15 distributed for review during the evidentiary hearing of November 9, 2010. Reasons in support of
16 this Response are set forth below.

17
18 **MEMORADUM OF POINTS AND AUTHORITIES**

19 **I. The Court shall conduct oral examination of prospective jurors.**

20 Rule 18.5(d), Ariz. R. Crim. P., provides that the court "shall control the *voir dire*
21 examination and ***shall conduct a thorough oral examination*** of prospective jurors." (*emphasis*
22 *added*). While the State agrees that a limited questionnaire should be used to identify those
23 potential jurors who should be stricken for cause or cannot serve due to the proposed trial
24 schedule or exposure to pretrial publicity, the State objects to the twenty-three page proposed
25 questionnaire submitted by Defendant.
26

1 Rule 18.5(d) requires this Court to conduct "thorough oral examination of prospective
2 jurors" and a written jury questionnaire cannot be substituted for this process. Given this fact,
3 Defendant's proposed questionnaire will be cumulative and time-consuming, and will be
4 completed by many prospective jurors who are never even called to the jury box. The State fails
5 to see how this proposed jury questionnaire will speed up the jury selection process.¹

6
7 Questions proposed by Defendant, such as whether a prospective juror ever played sports
8 in high school, ever participated in a charity walk, or ever deployed in combat, will not identify
9 any jurors in advance of trial who could be stricken for cause or hardship.

10 **II. There is no right to a written jury questionnaire in Arizona.**

11 The use of extensive jury questionnaires in a non-capital case in Yavapai County is
12 without precedent. The Defendant in this case faces three counts of manslaughter; the only issues
13 warranting a written jury questionnaire are whether the pretrial publicity or the lengthy trial
14 schedule renders a potential juror unable to serve.

15
16 Parties to the action are not entitled to a written jury questionnaire nor is the failure to use
17 a written questionnaire reversible error. A trial court's decision concerning *voir dire* will not be
18 overturned absent a clear abuse of the judge's discretion.

19 "...[w]e note that there is no right to use jury questionnaires in Arizona. Rule
20 18.5(d) of Arizona's Rules of Criminal Procedure commands the court to conduct a
21 "thorough oral examination of prospective jurors" and, upon request of a party,
22 requires the court to "permit that party a reasonable time to conduct a further oral
23 examination of the prospective jurors." Nothing in the language of Rule 18.5,
24 however, creates a right to use jury questionnaires. See *State v. Davolt*, 207 Ariz.
25 191, 207, ¶ 52, 84 P.3d 456, 472 (2004); *State v. Cañez*, 202 Ariz. 133, 148, ¶ 37,
42 P.3d 564, 579 (2002). Rather, whether to permit the use of jury questionnaires is
a decision committed to the sound discretion of the court. *Cañez*, 202 Ariz. at 148, ¶
37, 42 P.3d at 579.

26 ¹ Indeed, in a recent Yavapai County case, *State v. Democker*, jury selection took over a month to
accomplish. The prosecutors assigned to that case strongly believe the voluminous written jury
questionnaires that were used in that case significantly lengthened the time to select the jury.

Office of the Yavapai County Attorney

255 E. Gurley Street

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

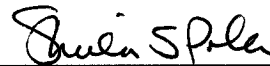
1 *State v. Moody*, 208 Ariz. 424, 450-452, 94 P.3d 1119, 1145 - 1147 (2004).

2
3 A trial court's decision concerning voir dire will not be overturned absent a clear
4 abuse of the judge's discretion. *Chaney*, 141 Ariz. at 304, 686 P.2d at 1274. Rule
5 18.5 of the Arizona Rules of Criminal Procedure requires a thorough examination
6 of potential jurors and allows parties reasonable time to conduct further oral
examination upon request. While the rule allows the use of written jury
questionnaires, it does not require it. *See State v. Cañez*, 202 Ariz. 133, 148, ¶ 37,
42 P.3d 564, 579 (2002).

7 *State v. Davolt*, 207 Ariz. 191, 207, 84 P.3d 456, 472 (2004).

8 The State does not object to the Court's proposed juror questionnaire distributed for
9 review during the evidentiary hearing of November 9, 2010. That questionnaire serves the
10 legitimate purpose of identifying jurors whom the parties and the Court can agree upon in
11 advance will be stricken for cause or hardship. The Defendant's proposed jury questionnaire does
12 neither. Accordingly, the State respectfully requests the Court to utilize only the questionnaire
13 distributed by the Court on November 9, 2010.

14
15 Respectfully submitted this 10th day of January, 2011.

16
17 

18 Sheila Sullivan Polk
19 Yavapai County Attorney

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21
22 **COPIES** of the foregoing emailed this
10th day of January, 2011:

23 Hon. Warren Darrow
24 Dtroxell@courts.az.gov

25 Thomas Kelly
26 tkkelly@thomaskellypc.com

Truc Do

COPIES of the foregoing delivered this
10th day of January, 2011, to

Thomas Kelly
via courthouse mailbox

Truc Do
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Office of the Yavapai County Attorney

255 E. Gurley Street

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

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Tru.Do@mto.com

via U.S. Mail

By: 

By: 